UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Northern Division)

CAROLINE COUNTY BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*,

Plaintiffs,

v.

TOWN OF FEDERALSBURG, MARYLAND,

Defendant.

Civil Action No. 23-00484-SAG

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

"The past refuses to lie down quietly," Archbishop Desmond Tutu famously said in discussing the process of racial reconciliation in South Africa following dismantling of the system of apartheid. Renowned civil rights lawyer and scholar Sherrilyn Ifill evokes this same sentiment in describing the ugly stain racial violence and discrimination have left upon Maryland's Eastern Shore, in her seminal work, "On the Courthouse Lawn: Confronting the Legacy of Lynching in 21st Century America." Discussing her findings about the history and impact of racial violence on the Shore, Professor Ifill captures the painful legacy Black residents in communities like Federalsburg carry with them from their region's gruesome history:

> The terror visited upon African American communities on the Eastern Shore in the 1930s has not just disappeared into thin air. It lives in the deep wells of distrust between blacks and whites in the sense that blacks still must keep their place and that both blacks and whites must remain silent about this history of lynching.
>
> The lynchings made possible the maintenance of all white political control in many counties on the Shore until the 1980s and in some cases the 1990s, decades after blacks had been elected to public office in other parts of the state. Blacks were not elected to the governing bodies in many counties on the Shore until the ACLU filed a series of voting-rights cases in the 1990s. …

Id., at xvi.

Now, fully 30 years after even those belated voting rights victories of the 1990s, comes this stark reminder that, in some corners of the Eastern Shore, the disgraceful era from Maryland's past recalled by Professor Ifill lives on still, crying out for change. It has been a long time coming, but today, Plaintiffs answer that cry. Through this Voting Rights Act challenge, the Black voters of the Town of Federalsburg reach for change 200-years-in-the-making in their own small corner of the Eastern Shore.

In Federalsburg, the Black population accounts for 47 percent of the Town's overall population and white residents are now an outright minority of the general population. And yet,

in this year of Federalsburg's bicentennial celebration*, no Black person in all history has been elected to Town government.* Against the backdrop of the area's history of racial oppression and its continuing legacy, and in conjunction with patterns of racial polarization among Federalsburg voters, the Town's at-large, staggered-term system enables the white majority to maintain Federalsburg's all-white government by overriding and diluting the influence of Black voters, suppressing Black candidacies, and preventing residents of color from electing their chosen representatives. *See generally*, Declaration of Carl O. Snowden, Exhibit 1, ("Snowden Decl.").

Two-time candidate Roberta Butler, a lifelong resident of Federalsburg whose family has lived in the community for generations, gives voice to the collective hope of her Town's Black residents:

> It is my dream for someone from the Black community in Federalsburg to be elected to the Town Council. . . . [W]ithout representation, nothing will change for the Black residents of Federalsburg. We are a part of this Town, and we need a voice in our Town government.

Declaration of Roberta Butler ("Butler Decl.") ¶ 18, attached as Exhibit 2. This is precisely the dream envisioned as reality by the Voting Rights Act.

As set forth below, Defendant Town of Federalsburg's existing election system—as well as certain of its proposed options for the future—violate Plaintiffs' rights under Section 2 of the Voting Rights Act of 1965. Without this Court's prompt intervention, Federalsburg will subject its Black citizens, including Plaintiffs, to irreparable violation of their fundamental right to vote. All relevant factors counsel in favor of immediate injunctive relief, and, accordingly, Plaintiffs request that the Court enter a preliminary injunction requiring Defendant to abolish its at-large, staggered-term election system and to implement a racially fair plan for the Town's scheduled September 2023 elections.

II. FACTUAL BACKGROUND

A. The Demographics of Federalsburg

As expert demographer William Cooper explains in his Declaration, Federalsburg is a small town on Maryland's Eastern Shore that is steadily diversifying. *See* Exhibit 3, Decl. of William S. Cooper ¶ 22 ("Cooper Decl."). Census data show sparse growth but increasing diversification in the Town, with the Black population increasing from 37 percent to 47 percent over the past 20 years. *Id*. Meanwhile, the Town's white population dropped from 59 percent in 2000, to 54 percent in 2010, to 47 percent in 2020. *Id.* The Black population in Federalsburg encircles the downtown area, while the Town's white population lives primarily in the geographically compact area in the Town center. *Id.* ¶ 21. As a result of this racial segregation, it is readily possible to create reasonably compact majority-Black districts that provide Black voters an equal opportunity to elect candidates of choice to Federalsburg's Council. *Id.* ¶ 14.

B. Federalsburg Election System

The Town of Federalsburg has long maintained an at-large, staggered-term election system, with four Council members and a Mayor. The Mayor serves a two-year term, while the term of Council members is four years, with all elections for Mayor and Council conducted at large. Under this system, elections for Mayor and half the Council are conducted every two years, with elections conducted since 2009 in late September of odd years. *See* Charter of the Town of Federalsburg, Art. II Elections § C2–1 (a). It is undisputed that no Black candidate in history has been elected as Mayor or Council member under this system, despite efforts by Black candidates seeking Council seats. Yet, as Mr. Cooper attests, for at least two decades, Federalsburg's Black population has numbered over 35 percent – certainly large enough for Black voters to elect a representative of choice in a fair system. Cooper Decl. ¶ 19. Instead, the Town has kept in place

a racially discriminatory at-large system that submerges the Black minority in the larger white voting pool, diluting their votes and diminishing Black voters' ability to elect their chosen candidates. *See Thornburg v. Gingles*, 478 U.S. 30 (1986). The minority vote dilution inherent in the Town's at-large system is reinforced by its use of staggered terms, because this practice makes it impossible for minority voters to "single shoot" for their candidates of choice. Snowden Decl. ¶¶ 13, 19. That is, through staggering of elections such that only two of the four council seats are contested at a time, with participation by the at-large electorate in all elections, Federalsburg makes it unworkable for Black voters to empower their chosen candidates strategically through single-shot voting in the way they might without the staggering. *Id.*

The absolute exclusion of Black candidates from Federalsburg public office reveals how elections in Federalsburg have been and continue to be polarized along racial lines. Polarized voting occurs when members of a protected class prefer candidate choices that are different from the rest of the electorate. Elections in which Black and white candidates compete against each other are especially probative in demonstrating how racially polarized voting can lead to minority vote dilution. *See, e.g. Cane v. Worcester Cnty., Md.*, 840 F.Supp. 1081, 1090 (D. Md. 1994) (three judge court). As explained in greater detail by political science Professor Kassra Oskooii, Black voters on Maryland's Eastern Shore, including those in Caroline County and Federalsburg, have voted "cohesively" over the last decade of elections. *See* Exhibit. 4, Report of Dr. Kassra Oskooii ¶¶ 7(b), 39. ("Oskooii Rpt."). Moreover, Dr. Oskooii's analysis shows that the voting patterns of white voters across the Eastern Shore diverge from those of Black voters, with white voters bloc voting to successfully elect their candidates of choice at the expense of Black-preferred

candidates.[1] *Id.* ¶¶ 7(c), 39. Because Black voters and white voters express different preferences, and because Black residents do not comprise a majority of the voting age population, Black voters have not been able to elect candidates of their choice. *Id.* ¶¶ 7(e), 45, 46.

This was the case on each occasion when Black candidates ran for Federalsburg office in the staggered, at-large system; the white candidates won easily. Most recently, this occurred in 2017, when Roberta Butler and Angel Greene ran at-large for the two Council seats open under the staggered term system. Ms. Butler and Ms. Greene were opposed by two white candidates, with the white candidates easily winning among the few voters (about 125) who participated in the election. *See* Oskooii Rpt., ¶ 45 & n. 20. Indeed, since the 2017 election and in many years prior to it, the specter of white bloc voting has discouraged Black candidates from even running for Federalsburg office. *See* Declaration of Dr. Willie Woods ("Woods Decl."), Exhibit 5 at ¶ 37.

C. Federalsburg Officials Have Resisted Compliance with the Voting Rights Act, Necessitating Court Intervention

In August of 2022, Black Federalsburg residents, including the individual plaintiffs, the Caroline County Branch of the NAACP, and the Caucus of African American Leaders, contacted the Mayor of Federalsburg by letter, detailing concerns about the Town's racially discriminatory

[1]As explained in Dr. Oskooii's Report, the sparse population of Caroline County and Federalsburg and the domination of white populations in existing election precincts create limitations on election data specific to the town and county. Thus, in order to assess Black voter cohesion and to conduct a reliable racially polarized voting analysis, Dr. Oskooii looked to the larger data set reflecting racial voting patterns across the Eastern Shore, which are representative of those within Caroline County and Federalsburg. A similar approach was used by this Court in *Marylanders for Fair Representation v. Schaefer*, 849 F.Supp. 1022 (D. Md. 1994), where similarities among Black and white voter preferences throughout the Shore were recognized, and the Court looked to outcomes throughout the mid-Shore in assessing racial polarization in voting. *Accord, Cane,* 840 F.Supp. at 1087-88 (noting that because there existed only nine election precincts in Worcester County, data limitations made County-specific data analysis unreliable, requiring plaintiffs to look beyond the data to assess racial polarization in voting).

election system. Woods Decl., Att. A. The correspondence warned that the Town's continued maintenance of an all-white government through use of the at-large, staggered term election system constitutes a violation of the Voting Rights Act. Plaintiffs expressed willingness to work collaboratively with the Town to remedy this blatant legal violation, but made clear that to Black voters, the need for elimination of the at-large, staggered term system is both non-negotiable and urgent. Plaintiffs recommended adoption of a racially fair district system and elimination of staggered terms in order to level the playing field for Black voters and candidates. To expedite the process and to illustrate ways such reforms could be made, Plaintiffs provided two sample district plans created by Mr. Cooper, one of the nation's foremost voting rights demographers and the expert demographer in this case.

Plaintiffs emphasized that the need for reform of Federalsburg's system is pressing, and that changes must be made in time for the scheduled September 2023 election. Not only does the upcoming election hold special importance in that this year marks the 200th anniversary of the Town's founding, but the rights violations suffered by the Black community due to inequalities within the system are ongoing and severe. As explained by Plaintiff Sherone Lewis:

> It is so incredibly important to have representation after not having it for 200 years. Two hundred years is too long, and what an opportunity it would be to finally have Black votes count, and to at last elect someone who could really address the needs of the Black members of this Town.

Sherone Lewis Declaration, Exhibit 6, ¶¶ 13-14.

Initially, Town officials expressed interest and support for the Black voters' demands, assuring Plaintiffs that litigation was not necessary because the Town would voluntarily correct its legal violations. Woods Decl. ¶¶ 17, 21. Yet since October, the Town has delayed action on reform time and again, dismissing the urgency felt by Black residents to secure a fair voice in Town government. *Id.* ¶¶ 22–35. Rather than follow through on its representations that

Federalsburg would abolish the at-large, staggered term system and conduct 2023 elections using a racially fair plan, the Town has left the existing plan in place and retained the staggered term system. Meanwhile, in February of this year, the Town introduced a resolution to combine the at-large system with a partial district system that would continue to dilute Black votes, as well as a plan to *cancel 2023 elections altogether*, proposing that the white incumbent Mayor and Council lawlessly extend their own terms in office for an additional 14 months. As opined by CAAL's Carl Snowden, this proposal is both unprecedented and unacceptable:

> Never in my time doing civil rights work in Maryland . . . have I seen this kind of outrageous power grab by white officials. Cancellation of the Federalsburg municipal election amid the Town's celebration of its bicentennial would deny the fundamental right to vote to all Federalsburg voters. But Black voters, who would be denied the opportunity to finally integrate their government in this historic year, would feel this most harshly. Indeed, for the Plaintiffs and other Black residents who have bravely stood up to challenge race discrimination in the existing system, the Town's very proposal feels like retaliation and punishment. It would simply be lawless to allow the incumbent white officials to unilaterally extend their own terms in office, and the notion that they profess to do this in the name of election reform is absurd.

Snowden Decl. ¶ 21. Far from providing a prompt remedy for the Town's ongoing discrimination against its Black residents, its proposed resolutions fly in the face of fairness.[2]

The Town of Federalsburg could easily replace its staggered, at-large system with a fully districted plan that would give Black voters equal voting opportunities—and do so in time for this year's elections. Cooper Decl. ¶¶ 14, 39–50. Plaintiffs have already made available to the Defendant two expert-crafted samples illustrating how a plan with either four single-member

[2] Following the filing of this lawsuit, on March 6, the Town introduced new resolutions altering its proposed election plans, and setting a public hearing on the new proposals for April 3, 2023. Town staff also recommended rescission of the Town's February 21 resolution proposing to cancel 2023 elections "[p]ending further discussion."

districts or two two-member districts can be drawn to include equal election opportunities for all voters in the Town. *Id.* Each of these plans adheres to all traditional redistricting principles, including that they (1) satisfy Constitutional one-person one-vote requirements; (2) are reasonably configured; and (3) respect communities of interest. *See Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245 (2022). Most importantly, unlike the existing system, the plans proposed by Plaintiffs each would prevent dilution of minority voting strength and provide Black voters an equal opportunity to participate in the political process.

Federalsburg's existing at-large, staggered term system is unlawful in the context of a community in which Black residents have borne and continue to bear the effects of longstanding political, societal, economic, and educational discrimination. *See* Woods Decl. ¶¶ 4–5; Lewis Decl. ¶¶ 6–13; Butler Decl. ¶¶ 5–17; Darlene Hammond Declaration, Exhibit 7 ¶¶ 9–21; Lywanda Johnson Declaration Exhibit 8 ¶¶ 4–13; and Elaine Hubbard Declaration Exhibit 9 ¶¶ 4–9. These social and historical conditions set the stage for the Town's complete exclusion of Black residents from government, and discourage Black candidates from even stepping forward to try to seek public office. As such, the Town's existing system violates the Voting Rights Act.

III. ARGUMENT

A. Standard of Review

The purpose of a preliminary injunction is to "prevent irreparable harm during the pendency of a lawsuit ultimately to preserve the court's ability to render a meaningful judgment on the merits." *United States v. South Carolina*, 720 F.3d 518, 524 (4th Cir. 2013) (quotation omitted). A court may enter a preliminary injunction if a plaintiff shows "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public

interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 188 (4th Cir. 2013) (en banc). In each case, courts must "balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter,* 555 U.S. at 24 (quotation omitted). In election cases comparable to this, where Black voters establish that their rights to participate equally in an upcoming election will be denied without prompt equitable relief, this Court has not hesitated to intervene. *See, e.g., Balt. Cnty. Branch of the NAACP v. Baltimore County*, No. 21-cv-032332-LKG, 2022 WL 657562 (D.Md. Feb. 22, 2022) (granting a preliminary injunction to halt conduct of the 2022 County Council election under a racially discriminatory redistricting plan adopted by Baltimore County and requiring implementation of an alternative plan that complied with the Voting Rights Act in time for the July, 2022 election).

B. Plaintiffs are likely to succeed in showing Federalsburg's at-large, staggered term system violates Section 2.

Section 2 of the Voting Rights Act prohibits any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). As the Supreme Court explained nearly four decades ago:

> The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives. This Court has long recognized that multimember districts and at-large voting schemes may operate to minimize or cancel out the voting strength of racial [minorities in] the voting population.

Gingles, 478 U.S. at 47 (internal quotation omitted). In considering another vote dilution case from Maryland's Eastern Shore, this Court has further explained that minority vote dilution occurs within an at-large election system "where the white majority consistently votes together as a bloc

to 'submerge' minority voters to defeat their preferred candidates[.]" *Marylanders for Fair Representation,* 849 F.Supp. at 1044, *citing Voinovich v. Quilter,* 113 S.Ct. 1149, 1155, (1993); *Gingles*, 478 U.S. at 46 n.11.

Under what has become known as "the *Gingles* test", Section 2 plaintiffs prove their claim by showing (1) the group in the minority (here, Black residents of Federalsburg) is "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) the minority group "is politically cohesive"; and (3) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Gingles*, at 50–51. Once these *Gingles* "preconditions" are established, courts also consider "the totality of the circumstances"—including factors identified in the Senate Report accompanying the 1982 amendments to the VRA[3]—to determine whether, as a result of the challenged election structure, "the political processes

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[3] S.Rep. No. 417, 97th Cong., 2d Sess. 28–29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 206–07. The so-called "Senate Factors" – most of which are present here – include:

> (1) whether there is a history in the state or political subdivision of official voting-related discrimination against the minority group;
> (2) the extent of racial polarization in the elections of the state or political subdivision;
> (3) the extent to which the state or political subdivision has used voting practices or procedures that enhanced the opportunity for discrimination against the minority group;
> (4) the exclusion of minority group members from the candidate slating processes;
> (5) the extent to which past discrimination in areas such as education, employment, and health hinder the ability of members of the minority group to participate effectively in the political processes;
> (6) the use of racial appeals in political campaigns;
> (7) the extent to which minority group members have been elected to public office in the relevant jurisdiction;
> (8) whether elected officials exhibit a significant lack of responsiveness to the particularized needs of minority group members; and
> (9) whether the policies offered to justify the challenged voting practice are tenuous.

See Cane v. Worcester Cnty., Md., 35 F.3d 921, 925 (4th Cir. 1994) (citing *Gingles*, 478 U.S. at 44–45).

leading to nomination or election in the State or political subdivision are not equally open to participation" by members of the minority group. *Id.* at 36 (quoting 52 U.S.C. § 10301(b)).

Here the Plaintiffs both satisfy the *Gingles* test and establish an overwhelming showing that the totality of circumstances warrant relief.

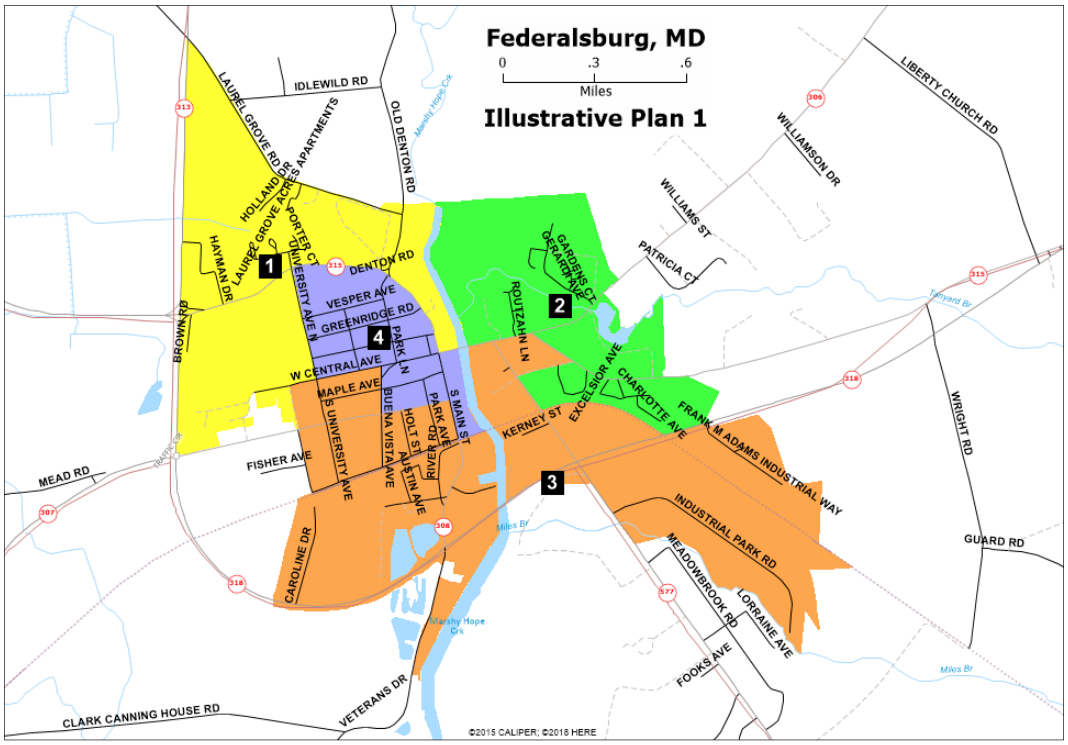
1. *Gingles* Factor One: Federalsburg's Black population is sufficiently large and geographically compact to form a majority in two single-member districts.

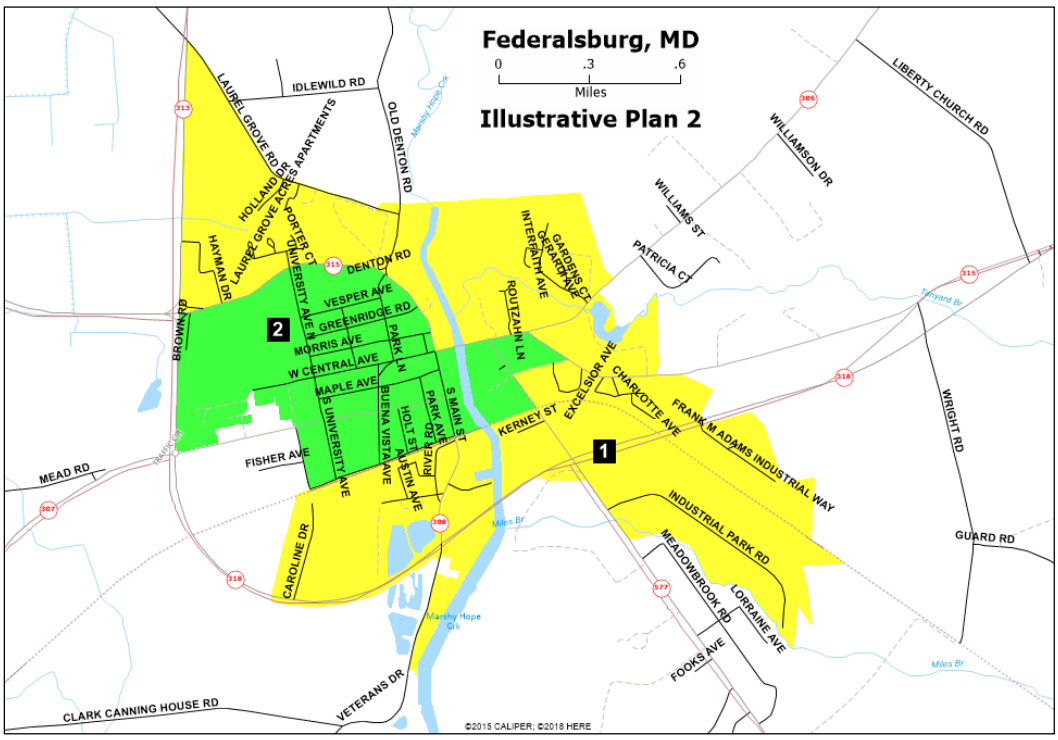
The first *Gingles* factor is readily satisfied here because Federalsburg's Black population is "sufficiently large and geographically compact to constitute a majority" in not just one, but two single-member districts among the Town's four Council seats. *Id.*, at 50; Cooper Decl.¶ 14. The numerosity aspect of this precondition involves a "straightforward," "objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area?" *Bartlett v. Strickland*, 556 U.S. 1 (2009); *accord, Marylanders for Fair Representation*, 849 F.Supp. at 1052 (collecting cases and holding that 53.6% Black voting-age population in proposed state delegate district was "sufficiently large" to satisfy *Gingles* factor 1).

Plaintiffs presented the Town with two separate plans: One demonstrates that Federalsburg's Black community is sufficiently large and geographically compact to comprise more than 50% of the voting-age population in two reasonably compact single-member Council districts; the other shows the same for a plan with two two-member districts. In his Declaration, demographer William Cooper confirms the viability of both plans, discussing each in detail. Cooper Decl. ¶¶ 39–50. As Mr. Cooper explains, the Town's Black population lives in a geographically compact area encircling Federalsburg's downtown. Cooper Decl. ¶ 21. Therefore, it is readily possible to create two substantial majority-Black districts because the Town's Black population is 'large and geographically compact.'" *Id.* ¶ 41. Given the Town's four-member

Council, these plans would afford Black voting opportunities as appropriate given the Town's roughly even Black-white split in overall population. In contrast, the at-large system, operating against the backdrop of the Town's history of discrimination and racially polarized voting patterns, both theoretically and in practice reserves *all* Council seats for white candidates.

Plaintiffs' illustrative plans are shown below.





As Mr. Cooper explains, the illustrative districts Plaintiffs propose satisfy analytical tests for compactness. Cooper Decl. ¶¶ 41–42. Additionally, these plans adhere to traditional redistricting principles, including that they (a) satisfy Constitutional one-person, one-vote requirements, (b) are reasonably shaped, compact and contiguous, (c) respect communities of interest, and (d) prevent dilution of minority voting strength. Cooper Decl. ¶ 42. Within these districts, the total number of voters are equivalent to the total population in the other districts. *Id.* And, in each of these proposed opportunity districts, the Black population is sufficiently large to constitute a majority.[4] *Id.* Hence, the first *Gingles* precondition is readily satisfied.

[4]As shown in the population charts accompanying the plans, the Black voting age populations in the majority-Black districts in Plan 1 are 66.5 and 57.8 percent. In Plan 2, the two-member majority-Black district has a voting-age population of 66.7 percent. *See* Cooper Decl. at ¶¶ 47, 50.

2. *Gingles* Precondition Two: The Black community is cohesive.

The second *Gingles* precondition is also satisfied here because Black voters across the Eastern Shore—including those in Caroline County and Federalsburg—are politically cohesive. *Gingles*, 478 U.S. at 49. "Bloc voting by blacks tends to prove that the black community is politically cohesive, that is, it shows that blacks prefer certain candidates whom they could elect in a single-member, black majority district." *Id.* at 68. Dr. Oskooii, an expert in voting rights, analyzed voting patterns to assess polarization throughout the Eastern Shore.[5] *See generally* Oskooii Rpt. ¶ 2. Moreover, as discussed below, Dr. Oskooii's analysis is strongly supported by testimony from Federalsburg residents and Eastern Shore activists about their on-the-ground knowledge of community cohesion.

To perform statistical analyses of Black voter cohesion and white bloc voting, Dr. Oskooii used election data from 2010 to 2022 and a widely accepted methodology called ecological inference analysis. *See Cane,* 840 F.Supp. at 1087 (employing similar expert analysis in finding racially polarized voting in Worcester County); *Ala. State Conf. of the NAACP v. Alabama*, No.

[5] As noted above, due to data limitations in Federalsburg and Caroline County, Dr. Oskooii looked at this larger data set, as this Court has instructed is appropriate. *See Cane,* 840 F.Supp. at 1088, *citing Gingles*, 478 U.S. at 57, n. 25; *Hall v. Holder*, 955 F. 2d 1563, 1571 (11th Cir. 1992) ("In situations where the election data and derivative statistical information is unavailable because the minority group has just recently begun to sponsor candidates or where the data is unreliable, the plaintiffs may rely on factors beyond endogenous election data that prove political cohesion."). Of course, Black voters challenging discriminatory election systems cannot be barred from making their cases due to data inadequacies, lest some of the most exclusionary systems, especially in rural areas, be allowed to remain in force on that technical ground. Thus, numerous courts have recognized that where local data are limited or unreliable, plaintiffs may supplement that data and employ other means to show racial polarization. *E.g. Cane,* at 1089 (relying on testimony from community members about racial polarization and cohesion within Worcester County to establish the *Gingles* factors); *Westwego Citizens for a Better Gov't v. City of Westwego,* 946 F. 2d 1109, 1118 n.12 (5th Cir. 1991) (citing additional cases).

2:16-CV-731-WKW, 2020 WL 583803, at *29, n.27 (M.D. Ala. Feb. 5, 2020) (recognizing ecological inference as the "gold standard" for racially polarized voting analysis). His analysis shows that Black Eastern Shore voters have demonstrated strong cohesion for more than a decade of elections. Oskooii Rpt. ¶ 7. Racial polarization is particularly striking in elections involving Black candidates challenging white candidates, and it is these elections that courts have consistently held to be most probative in assessing minority vote dilution. *See, e.g*. *Cane*, 840 F.Supp., at 1089, *citing Citizens for a Better Gretna v. City of Gretna, La*., 834 F.2d 496, 503 (5th Cir. 1987).[6]

The most recent example of this is seen in 2022 elections: Results by race for the nine Eastern Shore counties in the gubernatorial race show a clear pattern in which Black voters strongly preferred Black candidate (now Governor) Wes Moore while white voters strongly preferred his white opponent, Daniel Cox. On average, *over 90 percent* of Black voters cohesively

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[6] In assessing *Gingles* factors 2 and 3, the lack of local (or "endogenous") elections contested between Black and white candidates due to the dearth of Black candidates willing to run for office in a system they view as discriminatory is apparent; however, a dearth of Black candidates like this is common in places with highly polarized voting and a long history of racial discrimination and exclusion. Courts addressing voting rights claims in this context properly consider the reasonable justifications explaining the lack of Black challengers to white candidates in majority-white areas. For example, in *Marylanders for Fair Representation v. Schaefer*, the Court noted:

> Blacks in Wicomico, Dorchester, Caroline, and Talbot Counties rarely run for public office in majority white constituencies, and when they do, they usually lose. At the county level, no black has ever been elected to any of the countywide single-member offices (i.e., State's Attorney, Clerk of Court, Register of Wills, or Sheriff). With only one exception, the four counties have never elected a black councilmember or commissioner at-large.

849 F.Supp. at 1059. The pattern in Federalsburg has been the same, with a government maintained as all-white and few Black candidates challenging the system in local elections due to the futility they see in it. Butler Decl. ¶¶ 16–18.

supported Moore, whereas less than 31 percent of white voters supported Moore. Oskooii Rpt. ¶ 36. Likewise, in the 2022 Attorney General race, more than 90 percent of Black Eastern Shore voters coalesced around Black candidate Anthony Brown, while 71.3 percent of white voters backed Brown's white opponent, Michael Petroutka. Such statistics are legally significant. *See Gingles*, 478 U.S. at 80–82 (finding legally significant white bloc voting in North Carolina even where, on average, more than one-third of the white electorate voted for Black candidates).

The 2022 gubernatorial and attorney general elections are not outliers, but merely the most recent examples of persistent racially polarized voting on the Eastern Shore. The same results are seen consistently over the past ten years, including in the 2014 and 2018 gubernatorial elections, in which majority-Black precincts strongly favored Black candidates Anthony Brown (90.3% of Black vote) and Ben Jealous (88.1% of Black vote) over white candidate and eventual winner Larry Hogan (89.7% and 93.5% of white vote, respectively). *See* Oskooii Rpt. ¶ 37. Indeed, Professor Oskooii found racially polarized voting in *all but one election* since 2012. *Id.* Such examples carry through at the national level as well. While incumbent President Barack Obama won 95.1% of the Black Eastern Shore vote in 2012, he carried just 28.4% of the white vote. *Id.* ¶ 38. Moreover, these results cannot simply be attributed to differences in political affiliation. Even within the primary for the Democratic Party, racially polarized voting persisted. In 2022, Black Democratic primary voters voted in a bloc for Black Attorney General candidate and eventual winner Anthony Brown at 83.4%, while only 30% of white Democratic voters backed Mr. Brown, preferring instead white Democrat Katie O'Malley. *Id.* ¶ 42.

These results more than satisfy the legal threshold for a statistical showing of cohesive voting. *See Gingles*, 478 U.S. at 56 ("A showing that a significant number of minority group

members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim.").

Moreover, beyond this statistical showing, Plaintiffs provide ample testimonial evidence of Black community cohesion in Federalsburg, Caroline County, and throughout the Eastern Shore. First, several witnesses describe the close-knit nature of the present-day Black community, both in Federalsburg and throughout Caroline County. The NAACP's Willie Woods eloquently describes Caroline County's Black community as a "beautiful fabric" weaving together families—like those of Plaintiffs Roberta Butler and Elaine Hubbard—who have lived in Federalsburg for generations, with newcomers to the Town, and Black residents from other towns and rural areas of the County. "Although each town and city has its own cluster of families, we are all connected through a greater sense of community," Dr. Woods states, "through congregations where word is passed from church to church," as well as social and fraternal clubs, such that "each Black community supports one another throughout the entire area." Woods Decl. ¶¶ 7-9. At the center of Black Federalsburg is Community Civic League, a community hub for the Federalsburg Black Community, offering social and religious activities, as well as a food pantry for those in need. Woods Decl. ¶ 8. Plaintiffs also attest to the collective longing within the Black community for Black representation. *See* Butler Decl. ¶ 13 ("Members of the Black community were hopeful and excited that I was running for Town Council."); Hubbard Decl. ¶ 9 ("I want everyone in the town to feel as though they are on the same, level playing field. That's not possible without representation."); Lewis Decl. ¶ 12 ("[H]aving people who represent me and understand Black culture, having faces that look like mine in positions of power, having my voice understood and respected; these things would make me feel more like I am a part of Federalsburg."); Johnson Decl. ¶ 13 ("Having a Black elected official would alleviate some of the stress I experience living and

raising a family in Federalsburg. I want equal opportunity, and for someone to level the playing field so that I can achieve the dreams I have for myself and for my children").

And offering a long view, CAAL's Carl Snowden attests that over the course of decades, when Black residents on the Eastern Shore have been given a chance to elect their preferred candidates as a result of electoral reform, time after time, in small towns and larger counties alike, they have joined together to elect Black candidates. Snowden Decl. ¶¶ 13–17. As Mr. Snowden recounts, in a dozen Eastern Shore jurisdictions where at-large election systems were replaced by racially fair district plans as a result of Voting Rights Act challenges, Black voters cohesively have supported Black candidates for public office, bringing "historic and transformative change to the affected communities—literally changing the face of local Eastern Shore politics and affording Black residents a seat at table of government for the first time." *Id*. ¶ 17. *This is the ultimate test of Black cohesion*.

3. *Gingles* Precondition Three: White voters vote sufficiently as a bloc to usually defeat Black voters' preferred candidates.

Finally, both across the Eastern Shore and in Federalsburg, "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 51. Such bloc voting need not be motivated by racial animus or bias. *United States v. Charleston Cnty., S.C.*, 365 F.3d 341, 348 (4th Cir. 2004). Instead, "legally significant" white bloc voting refers to the frequency with which, and not the reason why, whites vote cohesively for candidates who are not backed by Black voters. *Id*. at 348–49. Again, analysis of elections involving Black and white candidates are most probative in evaluating white bloc voting. *Cane, supra.* at 1090.

Dr. Oskooii found high levels of white bloc voting for candidates running against the candidates whom Black voters cohesively supported. For example, in the 2022 Moore-Cox gubernatorial and Brown-Peroutka Attorney General races, the extreme racial polarization meant whites voting as a bloc were able to defeat Moore and Brown, the Black-preferred candidates, on the Eastern Shore. Oskooii Rpt. ¶¶ 35–36. While both Moore and Brown won the election statewide, their loss in the Eastern Shore as a result of white bloc voting demonstrates the racial polarization that persists in that region and ensures the defeat of Black-preferred candidates running for local office. The same was true in numerous other elections dating from 2012 through 2022. *Id.* ¶¶ 37–44 (white-preferred candidates defeated Black-preferred candidates on the Eastern Shore in the 2012 presidential election, the 2014 gubernatorial election, the 2016 Senate Democratic primary, the 2018 gubernatorial election, the 2022 gubernatorial and Attorney General Democratic primaries).

Dr. Oskooii's findings align closely with those of this Court in other cases assessing racially polarized voting on Maryland's Eastern Shore. *See Cane*, 840 F.Supp. at 1090 (finding the "statistics taken together with the voting patterns and electoral system show that the white majority votes significantly as a bloc to enable it usually to defeat the minority's preferred candidate") (internal quotation omitted); *Marylanders for Fair Representation*, 849 F.Supp. at 1059 (finding legally significant white bloc voting where Black candidates had never won in at-large systems or in majority-white single-member county council districts). While Section 2 does not guarantee Black electoral success, "vote dilution" can be inferred "from political famine." *Johnson v. De Grandy*, 512 U.S. 997, 1017–18 (1994).

Overall, Plaintiffs' evidence demonstrates that Black candidates of choice will lose elections in districts other than those where a majority of voters are Black. *See Gingles*, 478 U.S.

at 68 ("Bloc voting by a white majority tends to prove that blacks will generally be unable to elect representatives of their choice."). Indeed, the power of white bloc voting to defeat Black candidates of choice has completely locked Black residents out of office in Federalsburg. This, in turn, has discouraged Black candidates from even running in the first instance. Woods Decl. ¶ 38; Butler Decl. ¶ 17 ("I would never even consider running again as long as this current system stands."); Lewis Decl. ¶ 15 ("I would not consider running for office under the current election system"); Hammond Decl. ¶ 21 ("I would not consider running for office again under the current election system"). *Gingles* Factor 3 is satisfied.

4. Totality of the Circumstances and the Senate Factors

Once the three *Gingles* prerequisites are established, courts evaluate the totality of the circumstances, with special attention to the nonexhaustive list of "Senate factors" identified in *Gingles*, including: the extent to which members of a protected class are elected; any history of official discrimination in voting practices; discriminatory housing, education, and employment practices; and discriminatory election features and/or racial appeals. *Gingles*, 478 U.S. at 37–40 (citing S. Rep. No. 97-417, at 28–29 (1982)). Here, Plaintiffs not only easily satisfy the *Gingles* preconditions, but make an unambiguously compelling showing as to the totality of the circumstances, including the Senate factors.

The Supreme Court has instructed that "the most important" of the Senate Factors are the "extent to which minority group members have been elected to public office in the jurisdiction" and the "extent to which voting in the elections of the state or political subdivision is racially polarized." *Gingles,* at 51 n.15 (internal quotations omitted). As such, it is key to this calculus that no Black candidate has been elected to public office in Federalsburg history. Butler Decl. ¶ 8. Equally paramount for consideration is the fact that—as explained throughout this brief—the

Black residents of Federalsburg inhabit a world deeply polarized along racial lines, in voting and all aspects of civic life.

These two "most important" factors thus favor the Plaintiffs. Next, the Court considers (a) the area's past history of voting discrimination and use of election practices that enhance discrimination; (b) the continuing legacy of past discrimination in the community; and (c) the unresponsiveness of the Town's government to Black community concerns.

a. Federalsburg and Caroline County have a long history of official, voting-related discrimination, including use of election features that enhance discrimination.

The glaring current reality of Federalsburg's all-white government showcases the present-day legacy of the long history of official discrimination with respect to voting across Maryland's Eastern Shore. This history is important because it affects how and why people vote the way they do. *Brown v. Bd. of Sch. Comm'rs of Mobile Cnty., Al.,* 542 F.Supp. 1078, 1094 (S.D. Ala. 1982), *aff'd*, 706 F.2d 1103 (11th Cir. 1983), *aff'd* 464 U.S. 1005 (1983).

In *Marylanders for Fair Representation*, *supra*, this Court detailed the Eastern Shore's history of race discrimination with respect to voting rights (citing to trial testimony of Carl Snowden):

> Although on a statewide basis Maryland's voting rights record is in many respects an admirable one, we cannot turn a blind eye to the Eastern Shore's "history of official discrimination" that impaired blacks' rights to register and to vote. In 1904 Maryland's General Assembly enacted the "Poe amendment" to the state constitution, which would have effectively disenfranchised most black voters. In reviewing the State's history, the defendants make much of the fact that, in a 1905 ratification referendum, Maryland's voters soundly rejected the Poe amendment. The defendants fail to note that the General Assembly enacted the amendment the previous year at the insistence of legislators from the Eastern Shore who agreed to back an oyster-seeding measure in exchange for Western Shore legislators' support for black disenfranchisement. Furthermore, when the Poe amendment was subjected to a statewide referendum, only three counties voted resoundingly *in favor* of the disenfranchising of Maryland's blacks—and all three were on the lower Shore.

> Maryland's discriminatory voting practices are not only found in the history books. Until 1988, Maryland law condoned "dual registration," which required voters to register separately for municipal and non-municipal elections. African–American citizens who had been historically excluded from full participation in political life, and hence were unfamiliar with registration procedures, frequently were turned away at the polls because they had only registered for one type of election. The dual registration requirement confused voters, depressed turnout, and—according to a 1985 report by Attorney General Stephen H. Sachs—may have resulted in the dilution of black voting strength on the Eastern Shore.
>
> Second, at least until the mid–1980s, some all-white, but state-funded, volunteer fire departments on the Eastern Shore functioned as a kind of unofficial slating organization for white candidates. . . . Only in 1988, upon the Attorney General's written recommendation, did the Governor amend the Code of Fair Practices to prevent racially discriminatory fire departments from receiving state funds. Even today, counties on the lower Shore continue to locate polling places in white-dominated volunteer fire companies, a hostile environment that may depress black electoral participation.

849 F.Supp. at 1061 (citations omitted, emphasis in original).

Expanding upon the Court's comment in the *Marylanders* case that discriminatory voting practices "are not only found in the history books," Carl Snowden points to present-day problems with the Town's current election structure and its features:

> First, of course, the at-large structure submerges Black voters in the larger electorate of white voters, enabling the white majority to minimize the influence of the Black minority by overriding Black voter preferences so that their candidates of choice are always defeated. Second, the dilution of Black votes inherent in the at-large structure is reinforced by the staggering of terms, because this practice makes it impossible for minority voters to "single shoot" for their candidates of choice within a larger pool. By this, I mean that by staggering elections so that only two of the four council seats are contested at a time, with participation by the at-large electorate in all elections, Federalsburg makes it unworkable for Black voters to use their votes in a way that gives a strategic advantage to their chosen candidates through "single-shot" voting – meaning voting only for their top candidate and no other – as they could without the staggering.

Snowden Decl. ¶ 19.

Numerous courts have recognized, as Mr. Snowden explains, that election staggering erects an "anti-single shot" obstacle that can enhance the opportunity for discrimination and thus qualify

as an additional factor identified by the Senate Report. *See, e.g., City of Lockhart v. United States*, 460 U.S. 125, 135 (1983) ("The use of staggered terms also may have a discriminatory effect under some circumstances, since it, too, might reduce the opportunity for single-shot voting"); *Collins v. City of Norfolk, Va.*, 883 F.2d 1232, 1236 (4th Cir. 1989) ("The Supreme Court has long recognized that at-large voting in a multimember political unit . . . may prevent minorities from electing representatives of their choice by diluting their voting strength. The potential for this type of discrimination may be enhanced by staggered terms.") (citation omitted).[7] As these authorities warn, Federalsburg's use of staggered terms with its discriminatory at-large system further marginalizes Black voters, and should be considered by this Court as another exacerbating factor requiring invalidation of the Town's election system.

But this is not the only election feature used by the Town of Federalsburg that contributes to minority vote dilution. Other practices employed by the Town further discourage Black turnout for local elections. These include: (1) use of odd-year, stand-alone municipal elections every two years; (2) poll placement only in a single white area of town, which residents recall as sometimes

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[7] *Accord, Holloway v. City of Virginia Beach*, 531 F.Supp.3d 1015,1085 (E.D.Va. 2021), *vacated on other grounds*, 42 F. 4th 266 (4th Cir. 2022) ("Staggered terms … prevent the Minority Community from concentrating their votes on a single candidate and increasing the chances that that candidate gets elected.")(quotation omitted); *Jackson v. Edgefield Cnty., S.C. Sch. Board*, 650 F.Supp. 1176, 1203 (D.S.C. 1986) (invalidating at-large election system for school board as racially discriminatory, and finding staggered terms exacerbated the system's discriminatory effects). As the Court noted in *Jackson*:

> Staggered terms . . . are recognized as contributing to minority vote dilution in a racial bloc voting jurisdiction, because they "have the effect of forcing head-to-head contests between [Blacks] and Whites and depriving [Black voters] of the opportunity to elect a candidate by single-shot voting."

Id., quoting City of Rome v. United States, 446 U.S. 156, 185 (1980).

being at the all-white volunteer fire company; and (3) a lack of communication regarding basic information about the Town's elections, including when the election will be held and where the polls will be located. *See* Snowden Decl. at ¶ 20; Butler Decl. ¶ 14; Lewis Decl. ¶ 9; Johnson Decl.¶ 13; Hubbard Decl. ¶ 7. If Defendant is concerned about voter turnout, as Town officials expressed in past discussions, they could certainly open a polling location at the Community Civic League, a "hub for the Federalsburg Black community" that has endured as "a building of significant importance, standing as the former school for Black children during segregated America." Woods Decl. ¶¶ 8, 28.

Finally, Plaintiff Darlene Hammond recounts an example of *ad hoc* practices employed by Defendant to discourage Black residents from participating in the Town's political system. Ms. Hammond, a well-known and well-liked resident of Federalsburg, decided to run for Town Council after developing a medical condition due to mold that had accumulated as a result of the Town's decision to build a housing subdivision directly on wetlands. Hammond Decl. ¶¶ 12–13. Just two weeks before the election, the Town announced that there would be a public platform where the candidates would have to speak in front of an audience. *Id.* ¶ 14. Ms. Hammond had not heard of any similar event in any prior election, and no similar event has been held in any election since. *Id.* Additionally, several white candidates were permitted to declare candidacies at the last minute. *Id.* Ms. Hammond believes these changes were made merely to prevent her from winning the election. *Id.* Ms. Hammond participated in the public platform event, but felt the room shift notably and the predominantly white audience turn against her when she mentioned that she would bring "diversity" to the Council, pointing out that, despite having a diverse community, diversity was not reflected in Federalsburg's political system. *Id.* ¶¶ 15–16. Ms. Hammond ultimately lost the election to her white opponents. *Id.* ¶ 17.

b. Discrimination in Federalsburg and across the Eastern Shore has caused racial oppression over centuries, with lasting impacts today in the form of severe socioeconomic disparities.

The history of race relations on Maryland's Eastern Shore is a deeply troubling one, from the time of the first settlers and continuing through the 19th and 20th centuries, with impacts of the Shore's racial caste system persisting today.

> "Backwards" has long been a term used to describe the Eastern Shore, says writer Lydia Woolever, "justly so, as many of these small towns still feel stuck in something closer to the middle of the 20th century than 21 years into the 21st. On the Eastern Shore, past remains prologue, and decades of silence leave old wounds unhealed."

Lydia. Woolever, *Turning Tides: After Decades of Silence, the Eastern Shore Begins to Reckon with Its Difficult History*, Baltimore Magazine, February, 2021[8] (Hereafter, "*Turning Tides*").

Chronicling the history of race relations on the Eastern Shore, Woolever starts with the arrival of the first African Americans in bondage in 1619:

> In many ways, it can be said that the African-American experience began in this region—on the Chesapeake Bay—when the first captured Africans arrived in Jamestown, Virginia, in 1619. . . . Tens of thousands of men, women, and children of African descent were brought by boat to tidewater ports that speckled the shorelines, tangling race and economics in a brutal web for centuries, particularly on the Eastern Shore—a 110-mile stretch of low-lying hinterlands separated from the rest of the state by the continent's largest estuary.
> . . .
> Leading up to the Civil War, Maryland's below-the-Mason-Dixon-Line, border-state identity led to stark divisions of sentiments and sympathies, notably in rural communities like the Eastern Shore, where the economy relied on a racial caste system, with the state legislature even considering secession in 1861. Ultimately, Talbot County sent more than 300 soldiers to the Union Army, but even after the Emancipation Proclamation, life changed slowly here, if much at all. Postwar "Black codes" and eventually Jim Crow laws kept wealth, resources, and power largely in the hands of white landowners, influencing housing, education, and employment for decades to come. African Americans often worked as low-

[8] https://www.baltimoremagazine.com/section/historypolitics/eastern-shore-begins-to-reckon-with-difficult-history-racism-slavery

> wage farmhands and laborers in seafood-packing houses. Shore towns were hit hard by the Great Depression, still isolated from the rest of the state until the first Bay Bridge span in 1952, and that economic plight would cause many to move away to industrialized cities during the Great Migration of the 20th century.

Id. As time went on, "the legacy of slavery would take on new forms, like segregated restaurants, theaters, schools, and hospitals, with Blacks and whites still living in separate silos[.]" *Id.*

Carl Snowden portrays a similar picture of the Eastern Shore even in the late 20th Century, saying crossing the Bay Bridge was akin to "stepping back in time" to a "world characterized by racial apartheid not seen in other parts of our state for decades." Snowden Decl. ¶ 10.

> Decades had passed, and still the large Black populations of Shore communities remained completely absent from government, business and civic life. You could go into a government office or a local shop and never see a Black face; those who were employed were hidden in the back rooms, engaged only in service work or sweeping up after white people. Black Shore residents felt afraid, oppressed and hopeless.

Snowden Decl. ¶ 11.

Later, describing the *current* situation in Federalsburg, Mr. Snowden sadly laments that it is not that different than those Eastern Shore communities of yesteryear:

> All these years later, the situation in Federalsburg still looks today much like it looked in those other Eastern Shore communities of the 1980s and 1990s. The government is now and has always been all white as a result of the Town's old-style at-large election system, and voters in the minority – Black voters – are denied an equal voice in their government. Because of this, Black residents feel unrepresented and disconnected from their government, as if the white officials who run the Town don't care about them and scarcely even see them.

Id. at ¶ 18.

For the Plaintiffs, the Town's current day domination by white officials and residents is just more of what they have always known. Black residents describe feeling disrespected and unseen, portraying white officials in charge of Town government as oblivious to their concerns.

The Town's dual societies date back as long as residents can recall. Federalsburg natives like Roberta Butler and Elaine Hubbard grew up with segregated schools, a "whites only" swimming pool, and a movie theatre where Black people were allowed to sit only in the balcony. Ms. Butler tells the story of the Town's seizure of her grandparents' property without compensation to widen a road, and recounts her Mother telling her to just keep her "chin up" and "endure" as she was shunned and taunted with racial epithets during integration efforts. Butler Decl. ¶¶ 5–7; Hubbard Decl. ¶ 5. Sherone Lewis recalls noticing that her maternal grandfather, who generally had an awe-inspiring presence, would shrink in stature in the company of certain white individuals of the community, and that he was called "boy" by his boss. Lewis Decl. ¶ 3.

Even today, this dual society persists and racism, at its most base level, is being driven deeply into the minds of the Town's youngest generation. A white Federalsburg resident jeered at Ms. Lewis's child, asking where "n-word drive is" and her daughter had to endure unwelcome touching of her locks in school. Lewis Decl. ¶ 6. Ms. Lewis also recalls that there was a Confederate flag prominently displayed in the town for many years, visible from the high school. *Id.* ¶ 10. Similarly distressing, one of Ms. Johnson's children was given a piece of cotton and cotton seeds from his teacher, and in another instance one of her son's teachers grabbed him by the collar. Ms. Johnson's youngest, her seven-year-old son, was hit by the school officer just two years ago. There was no consequence or accountability in any of these disturbing events. Johnson Decl. ¶¶ 9–10.

Black residents of the region today bear continuing effects of this longstanding racial caste system, including in housing, education, employment and throughout public life. "People might

think it's a thing of the past, but it still informs the present," says retired Salisbury University history professor Clara Small, an Eastern Shore historian who is Black.[9]

Continuing socioeconomic disparities divide starkly along racial lines. As noted in the Complaint, "30 percent of Black adults never finished high school, the Black unemployment rate is nearly triple that of the white unemployment rate, and over 69 percent of households rely on food stamps to feed their families." Complaint ¶ 20.

Details of additional disparities are provided by William Cooper. For example:

- Black people in Federalsburg experience a poverty rate that is about two and a half times the poverty rate for white people. Nearly one-third (30.3%) of Black people live below the poverty line, as compared to 12.2% of white people.
- In Federalsburg, Black median household income is $28,427 – about 60% of the $47,411 median income of white households.
- Over three-quarters of Black households (83.5%) rent their residences in Federalsburg, as compared to a rental rate of about two-fifths (42.2%) for white households.
- Just 9.3% of Black people in Federalsburg are employed in management or professional occupations, as compared to 24.1% of white people.

Cooper Decl. ¶¶ 23–32.

c. Federalsburg is not responsive to its Black residents.

There is, and historically has been, a lack of responsiveness on the part of Federalsburg government to the particularized needs of the Black residents. As discussed above, the long history of discriminatory policies and practices in infrastructure, education, housing, employment, and police protection reflect the region's continuing failure to address the needs of its Black residents.

[9] See L. Woolever, *Turning Tide*s.

This includes an array of ways, large and small, that Town officials overlook and disrespect Black residents. Examples abound:

- Lywanda Johnson notes that despite raising many issues to school officials throughout the years, she was always met with resistance. Examples range from ensuring her children are safe in school, to fighting an unjust suspension of her first-grade child, to advocating for her son to be given the IEP he needed. Johnson Decl. ¶¶ 8–12. The constant battle and lack of responsiveness is tiresome for Ms. Johnson. *Id.* ¶ 12. This general lack of responsiveness even influenced Ms. Lewis to run for the Caroline County Board of Education in 2018 in order to make school better for Black students from the inside; unfortunately, she lost to the white male incumbent. Lewis Decl. ¶ 8.

- Ms. Butler has repeatedly asked the Council to fix the terrible roads in the Black community, to which the Council responds that they will "get to it." They never do. Butler Decl. ¶ 9.

- Town officials failed *even to notice* – until Black residents raised the issue through their recent advocacy – the outrageousness of maintaining an all-white government in a diverse community like Federalsburg, or that for more than 20 years, election reform could have benefitted the Town's growing Black community by affording them an equal chance at representation. Cooper Decl. at ¶ 22 (noting that the Black community has been large enough since at least 2000 to create a majority in a single-member district).

- Town officials ignore complaints about racial targeting and harassment by police; Johnson Decl. ¶¶ 9–10 (describing one instance where a school police officer hit her son, and another where a police officer came to Ms. Johnson's home, brought her downtown, and questioned her in an intimidating manner for no reason).

- Many Black members of the community have no knowledge of when elections are, who is running, and feel the town keeps them in the dark about other community affairs Lewis Decl. ¶ 9; Johnson Decl. ¶ 14. They wish the town provide more information to Black residents about these things. Hubbard Decl. ¶ 8 (saying she feels without Black representation, she has no direct channel to the Town government), ¶ 7 ("Town elections are not publicized well, and it is hard to know when it is election day, or who is running").

- The Town has failed to locate any polling place in the Black part of Town. Johnson Decl. ¶ 14 (describing that she does not feel welcome having to go downtown to vote); Lewis Decl. ¶ 9 ("when I do go to vote, I feel uncomfortable going downtown. There is a bad energy when you have to go to the places you typically tend to avoid; you get bad looks, and I only really go into that part of Federalsburg when necessary").

Finally, of great relevance here, the Town's lack of responsiveness is evident in its refusal to adopt an election reform plan consistent with the Voting Rights Act, despite strong appeals to do so from many concerned citizens, including Plaintiffs, throughout the fall of 2022 and into 2023. Woods Decl. ¶¶ 22–33.

C. Black Federalsburg voters, including Plaintiffs, will suffer irreparable harm absent an injunction.

Plaintiffs and hundreds of other Federalsburg citizens will suffer irreparable injury absent a preliminary injunction from this Court. "It is beyond cavil that 'voting is of the most fundamental significance under our constitutional structure.'" *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)). Courts routinely find that restrictions on the fundamental right to vote, even for a brief period of time, constitute irreparable injury. *See, e.g.*, *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (the denial of the fundamental right to vote is unquestionably "irreparable harm"); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (same). In particular, discriminatory voting laws are "the kind of serious violation of the Constitution and the Voting Rights Act for which courts have granted immediate relief." *United States v. City of Cambridge, Md.*, 799 F.2d 137, 140 (4th Cir. 1986).

The potential harm to Plaintiffs here is irreparable. It is impossible to provide adequate relief for claims such as the ones raised here during or after an election. *See Republican Party of N.C. v. Hunt*, 841 F.Supp. 722, 727-28 (E.D.N.C. 1994) (granting preliminary injunction because, *inter alia*, plaintiffs would be irreparably harmed if existing method for electing superior court judges were followed). If preliminary relief is not granted and Plaintiffs prevail at trial, Plaintiffs' core right to political participation will have been violated by an election being decided using a system that impermissibly dilutes the votes of certain citizens.

Without a fair map, Black Federalsburg voters will be deprived of fair representation for the foreseeable future. Today's Federalsburg is far more diverse than it was 20 years ago. *See* Cooper Decl. ¶ 22 (charting, since 2020, growth of Black population from 37 to 47% and waning of white population from 59% to 47%). That diversity is not reflected in the Town's government, and the disparity, already intolerable, will only increase.

Finally, district courts in this Circuit have found irreparable harm from and enjoined redistricting schemes found likely to violate Section 2. *See, e.g.*, *NAACP-Greensboro Branch v. Guilford Cnty. Bd. of Elections*, 858 F.Supp.2d 516 (M.D.N.C. 2012) (granting preliminary injunction because, *inter alia*, plaintiffs would be irreparably harmed if redistricting law were allowed to take effect); *Republican Party of N.C.*, 841 F.Supp. 728 (granting preliminary injunction because, *inter alia*, plaintiffs would be irreparably harmed if existing method for electing superior court judges were followed).

D. The balance of equities and the public interest favor a preliminary injunction.

When the Defendant is a governmental actor, these two factors merge and are properly considered together. *Roe v. Dep't of Defense*, 947 F.3d 207, 230 (4th Cir. 2020) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)); *Taliaferro v. N.C. State Bd. of Elections*, 489 F.Supp.3d 433, 438 (E.D.N.C. 2020) ("The Court considers the public interest and the balance of the equities together.").

The balance of equities also points strongly in favor of preliminary relief for at least three reasons: (1) the potential harm to Defendant is minimal, especially when compared to the potential harm to Plaintiffs; (2) there is sufficient time to adopt a new redistricting plan; and (3) Plaintiffs did not delay in raising their claims.

The equities weigh in favor of granting Plaintiffs' motion because any burden Defendant may claim pales in comparison to the deprivation of Plaintiffs' core right to political participation. Defendant may claim harm from the administrative costs of redistricting and potential voter confusion. But the government "is in no way harmed by issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (internal quotations and citation omitted). *See also Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (finding that defendant "is in no way harmed by issuance of a preliminary injunction which prevents it from enforcing a regulation, which, on this record, is likely to be found unconstitutional").

The Town's nonpartisan election is scheduled for September 26, 2023. This leaves sufficient time for a plan to be enacted and vetted without undermining the public's interest in an orderly election this year. The Town could, for example, readily adopt one of the two plans that Plaintiffs have submitted. These timing-based concerns, far from harming Defendant or the public interest, "simply serve to emphasize why a preliminary injunction during these early stages of the filing period would better serve the public than waiting until the eve of the election." *NAACP-Greensboro Branch*, 858 F.Supp.2d at 529. At that point, or any time thereafter, "[a] victory on the merits by plaintiffs would require the court either to nullify the elections that had already taken place and thereafter order new elections at considerable cost and time to the public and to all involved, or to bring the campaigns then in process to a staggering halt . . . . Either alternative would be equally undesirable and would result in further delay and hardship to plaintiffs in vindicating their rights established by a victory on the merits." *Republican Party of N.C.*, 841 F.Supp. at 728.

Finally, Plaintiffs have not delayed in raising their claims. To the contrary, Plaintiffs began this process in August, repeatedly urging the Town to move expeditiously to comply with the Voting Rights Act. After the Town needlessly delayed the process, failing to fulfill its promises to implement timely reform despite several opportunities, Plaintiffs warned the Town on January 26 that continued delay would lead to litigation. And just one day after the Town on February 21 made clear its rejection of a fair districting plan, Plaintiffs filed this lawsuit. They now seek an injunction promptly following filing of their Complaint, in order to allow the Defendant ample time to reform its election system in advance of the scheduled 2023 election. Plaintiffs' diligence in raising their claims and pursuing relief should further tip the scale in favor of granting relief.

For the reasons discussed, the balance of equities and public interest support injunctive relief at this stage, before the election cycle begins.

IV. Conclusion

For the foregoing reasons, Plaintiffs request that the Court issue a preliminary injunction invalidating the Town of Federalsburg's at-large, staggered term election system as violating the Voting Right Act of 1965, and order Defendant to implement a racially fair election plan in time for the scheduled 2023 municipal elections.

Dated: March 9, 2023

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